

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

FILED  
2017 FEB -6 AM 9:29  
REGIONAL HEARING CLERK  
EPA REGION VI

IN THE MATTER OF: )

FORMOSA PLASTICS CORPORATION, )  
LOUISIANA )  
BATON ROUGE, LOUISIANA )

RESPONDENT )  
\_\_\_\_\_ )

DOCKET NO. CAA-06-2016-3362

**ADMINISTRATIVE ORDER ON CONSENT**

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency, Region 6 (EPA) and Formosa Plastics Corporation, Louisiana (Respondent) in the above-referenced proceeding, hereby enter into this Administrative Order on Consent (Order).

**I. INTRODUCTION AND JURISDICTION**

1. This Order is issued by EPA pursuant to Section 113(a)(3) and (4) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (4), which authorizes EPA issue compliance orders for violations of the CAA, including violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated at 40 C.F.R. Part 68. The Director, Compliance Assurance and Enforcement Division, EPA Region 6, is the person to whom the authority has been delegated to issue compliance orders in the States of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

2. This Order is issued for the Respondent's failure to comply with the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 regarding the Respondent's facility located at the end of Gulf States Road, Baton Rouge, Louisiana 70805.

3. This Order is entered into upon mutual agreement of the parties. Accordingly, the Respondent agrees to undertake all actions required by it by the terms and conditions of this Order. The Respondent consents to and agrees not to contest the authority or jurisdiction of EPA to issue or enforce this Order, and also agrees not to contest the validity or terms of this Order in any action to enforce its provisions.

4. This Order shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, successors and assigns. No change in ownership or corporate or partnership status of the Respondent will in any way alter the status of the Respondent or its responsibilities under this Order.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. PRELIMINARY ALLEGATIONS**

5. Formosa Plastics Corporation, Louisiana (Respondent) is a Delaware corporation authorized to do business in the State of Louisiana.

6. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

7. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

8. The Respondent operates a manufacturing facility located at the end of Gulf States Road, Baton Rouge, Louisiana 70805. The primary commodity produced at the facility is polyvinyl chloride resin.

9. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

10. The Respondent's facility identified in Paragraph 8 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

11. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 8.

12. Each of the following substances is a "regulated substance", as defined in 40 C.F.R. § 68.3 and set forth in 40 C.F.R. § 68.130:

- A. Chloroform [Methane, trichloro-]
- B. Vinyl Chloride [Ethene, chloro-]
- C. Hydrogen chloride (anhydrous) [Hydrochloric acid];
- D. Propylene [1-Propene]; and
- E. Chlorine.

13. "Process" is defined in 40 C.F.R. § 68.3 as meaning

any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

14. The Respondent has the following processes at the stationary source identified in Paragraph 8:

- A. VCM (vinyl chloride monomer) process; and
- B. PVC (polyvinyl chloride) process.

15. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

- A. Chloroform [Methane, trichloro-] – 20,000 pounds;
- B. Vinyl Chloride [Ethene, chloro-] – 10,000 pounds

- C. Hydrogen chloride (anhydrous) [Hydrochloric acid] – 5,000 pounds;
- D. Propylene [1-Propene] – 10,000 pounds; and
- E. Chlorine – 2,500 pounds.

16. The Respondent has exceeded the threshold quantity for chloroform [methane, trichloro-], vinyl chloride [ethene, chloro-], hydrogen chloride (anhydrous) [hydrochloric acid], propylene [1-propene], and chlorine at the VCM process identified in Paragraph 14.A.

17. The Respondent has exceeded the threshold quantity for vinyl chloride [ethene, chloro-] at the PVC process identified in Paragraph 14.B.

18. “Covered process” is defined in 40 C.F.R. § 68.3 as meaning “a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.”

19. The processes identified in Paragraph 14 are each a “covered process” as that term is defined by 40 C.F.R. § 68.3.

20. The covered processes identified in Paragraphs 14 and 19 are each subject to the “Program 3” requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

21. On or about July 22 – 24, 2014, EPA inspectors conducted an inspection of the Respondent’s facility.

## **B. VIOLATIONS**

### **1. Failure to Ensure that PHA Findings and Recommendations are Resolved in a Timely Manner**

22. 40 C.F.R. §§ 68.67 provides in part, that the owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by 40 C.F.R. Part 68. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards in the process. The process hazard analysis shall address, among other things, stationary source siting. The owner or operator shall establish a

system to promptly address the team's findings and recommendation, assure that the recommendations were resolved in a timely manner and that the resolution is documented. The owner or operator shall also develop a written schedule of when the actions are required to be completed. At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements of 40 C.F.R. § 68.67(d) to assure that the process hazard analysis is consistent with the current process.

23. The Respondent completed a facility siting study in June 2008.

24. The facility siting study was conducted to meet the requirements of 40 C.F.R. § 68.67(c)(5).

25. The Respondent failed to develop a written schedule for the findings and recommendations from the facility siting study.

26. The Respondent failed to resolve certain facility siting study recommendations in a timely manner.

27. The process hazard analysis (PHA) revalidation for the VCM process was completed on or about February 3, 2012.

28. The PHA revalidation for the PVC process was completed or about February 16, 2012.

29. The Respondent failed to resolve all of the recommendations from the PHA revalidation for the VCM process in a timely manner.

30. The Respondent failed to resolve all of the recommendations from the PHA revalidation for the PVC process in a timely manner.

31. Therefore, the Respondent violated 40 C.F.R. § 68.67(e) by failing to develop a written schedule to resolve certain facility siting study recommendations and by failing resolve certain facility siting recommendations and PHA recommendations in a timely manner.

**2. Failure to Timely Correct Deficiencies in 2008 and 2011 Compliance Audits**

32. 40 C.F.R. § 68.79 provides the following:

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.

\* \* \* \*

(c) A report of the findings of the audit shall be developed.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

33. On or about November 3 – 7, 2008, the Respondent conducted a compliance audit at the facility identified in Paragraph 8.

34. As of July 2014, the Respondent failed to timely determine and document an appropriate response to certain findings for the compliance audit identified in Paragraph 43.

35. On or about October 11 - 14, 2011, the Respondent conducted a compliance audit at the facility identified in Paragraph 8.

36. As of July 2014, the Respondent failed to timely determine and document an appropriate response to certain findings for the compliance audit identified in Paragraph 45.

37. Therefore, the Respondent violated 40 C.F.R. § 68.79(d) by failing to timely determine and document appropriate responses to certain findings of two compliance audits.

### **III. ORDER**

38. Based on the foregoing Findings of Fact and Conclusions of Law, and other information available to EPA, it is hereby **Ordered and Agreed** that the Respondent shall comply with the requirements set forth below:

A. Upon the effective date of this Order, the Respondent shall begin conducting the following activities and complete all required activities by the date indicated in Paragraph 38.B below:

1. Resolve all remaining recommendations from the June 2008 Facility Siting Study (as set forth in the May, 2015 Update found at FPC 2953 – 2964) in accordance with 40 C.F.R. § 68.67(e).
2. Resolve all remaining recommendations from the February 2012 PHA revalidation for the VCM process (as set forth in the May, 2015 Update found at FPC 2966 – 2978) in accordance with 40 C.F.R. § 68.67(e).
3. Resolve all remaining recommendations from the February 2012 PHA revalidation (as set forth in the May, 2015 Update found at FPC 2978 – 2989) for the PVC process in accordance with 40 C.F.R. § 68.67(e).
4. Correct all remaining deficiencies set forth in the November 2008 Compliance Audit (as set forth in FPC 3034 – 3051 and to the extent such deficiencies have not been included in or subsumed into the October 2011 Compliance Audit) and document an appropriate response for any remaining deficiencies in accordance with 40 C.F.R. § 68.79(d) for the remaining findings of the November 2008 Compliance Audit.
5. Correct all remaining deficiencies set forth in the October 2011 Compliance Audit (as set forth in the May, 2015 Update found at FPC 2926 – 2932) and document an appropriate

response for any remaining deficiencies in accordance with 40 C.F.R. § 68.79(d) for the remaining findings of the October 2011 Compliance Audit.

B. The Respondent shall complete all of the remaining requirements set forth in Paragraph 38.A within one year of the effective date of this Order.

C. The Respondent shall submit two status reports to EPA regarding the remaining items. The first status report is due six months from the effective date of the Order and second status report is due one year from the effective date of this Order. The Status Reports shall include the following information:

1. If a remaining item has been completed, documentation, such as a summary table, showing that the remaining item has been completed.
2. If a remaining item has not been completed,
  - a. A description of the actions that were taken during the prior six month period as to the remaining item;
  - b. A description of the actions that will be taken to complete the remaining item; and
  - c. Any issues that may prevent the Respondent from completing the remaining item.
3. Any other information that the Respondent believes is necessary.

D. Each status report must be accompanied by the following certification:

"I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondent by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

39. Unless otherwise specifically provided elsewhere in this Order, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be



directed to the individuals specified below at the addresses given (in addition to any action specified by statute or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

EPA:

Chief, Surveillance Section (6EN-AS)  
Air Enforcement Branch  
U.S. EPA, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733  
Attention: Sherronda Phelps

Respondent:

Paul Heurtevant  
Plant Manager, Assistant Vice-President  
Formosa Plastics Corporation, LA  
P.O. Box 271  
Baton Rouge, Louisiana 70821

#### **IV. GENERAL PROVISIONS**

40. The Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in this Order.

41. This Order shall not relieve the Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

42. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal,

which EPA has under any other statutory, regulatory, or common law authority of the United States.

43. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation.

44. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the Parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Section 112(r) of the CAA. Compliance by the Respondent with the terms of this Order shall not relieve the Respondent of its obligations to comply with the CAA or any other applicable local, State, or federal laws and regulations.

45. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, extremely hazardous substance, or other substance on, at, or from the Facility. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the CAA or any other law.

46. Nothing herein shall be construed as an extension of time for complying with any statutory or regulatory requirement under the CAA or any other law.

47. The Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

48. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppels, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

49. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the United States be held as a party to any contract entered into by Respondent or by its employees, agents, contractors, or consultants.

50. The Parties shall bear their own costs and fees in this action, including attorney fees.

51. Each undersigned representative of the parties to this Order certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind that party to it.

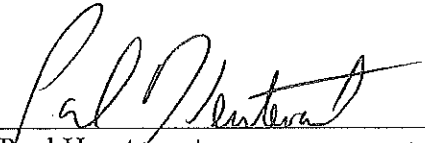
52. This Order shall terminate one year from the effective date of this AOC.

53. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, the Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, the effective date of this Order shall be the date of signature by EPA.

**THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS  
ADMINISTRATIVE ORDER ON CONSENT**


**FOR THE RESPONDENT:**

Date: 1/16/2017

  
\_\_\_\_\_  
Paul Heurtevant  
Plant Manager, Assistant Vice-President  
Formosa Plastics Corporation, Louisiana

**FOR EPA:**

Date: 2-1-17

  
\_\_\_\_\_  
Stacey B. Dwyer, P.E.  
Acting Director  
Compliance Assurance and  
Enforcement Division  
EPA – Region 6

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of February, 2017, the original and one copy of the foregoing Administrative Order on Consent was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the Administrative Order on Consent was sent to the following certified mail, return receipt requested 7006 0810 0005 9535 9241:

Mr. John King  
Breazeale, Sachse & Wilson, L.L.P.  
P.O. Box 3197  
One American Place, 23<sup>rd</sup> Floor  
Baton Rouge, LA 70821-3197

  
\_\_\_\_\_